



## Senate

General Assembly

February Session, 2014

**File No. 606**

Senate Bill No. 151

*Senate, April 17, 2014*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING CONTRACT COMPLIANCE REQUIREMENTS  
FOR THE METROPOLITAN DISTRICT OF HARTFORD.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4a-60 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2014*):

3 (a) Every contract to which the state or any political subdivision of  
4 the state other than a municipality is a party shall contain the  
5 following provisions:

6 (1) The contractor agrees and warrants that in the performance of  
7 the contract such contractor will not discriminate or permit  
8 discrimination against any person or group of persons on the grounds  
9 of race, color, religious creed, age, marital status, national origin,  
10 ancestry, sex, gender identity or expression, intellectual disability,  
11 mental disability or physical disability, including, but not limited to,  
12 blindness, unless it is shown by such contractor that such disability  
13 prevents performance of the work involved, in any manner prohibited

14 by the laws of the United States or of the state of Connecticut; and the  
15 contractor further agrees to take affirmative action to insure that  
16 applicants with job-related qualifications are employed and that  
17 employees are treated when employed without regard to their race,  
18 color, religious creed, age, marital status, national origin, ancestry, sex,  
19 gender identity or expression, intellectual disability, mental disability  
20 or physical disability, including, but not limited to, blindness, unless it  
21 is shown by such contractor that such disability prevents performance  
22 of the work involved;

23 (2) The contractor agrees, in all solicitations or advertisements for  
24 employees placed by or on behalf of the contractor, to state that it is an  
25 "affirmative action-equal opportunity employer" in accordance with  
26 regulations adopted by the commission;

27 (3) The contractor agrees to provide each labor union or  
28 representative of workers with which such contractor has a collective  
29 bargaining agreement or other contract or understanding and each  
30 vendor with which such contractor has a contract or understanding, a  
31 notice to be provided by the commission advising the labor union or  
32 workers' representative of the contractor's commitments under this  
33 section, and to post copies of the notice in conspicuous places available  
34 to employees and applicants for employment;

35 (4) The contractor agrees to comply with each provision of this  
36 section and sections 46a-68e and 46a-68f and with each regulation or  
37 relevant order issued by said commission pursuant to sections 46a-56,  
38 46a-68e and 46a-68f; and

39 (5) The contractor agrees to provide the Commission on Human  
40 Rights and Opportunities with such information requested by the  
41 commission, and permit access to pertinent books, records and  
42 accounts, concerning the employment practices and procedures of the  
43 contractor as relate to the provisions of this section and section 46a-56.

44 (b) If the contract is a public works contract, the contractor agrees  
45 and warrants that he will make good faith efforts to employ minority

46 business enterprises as subcontractors and suppliers of materials on  
47 such public works project.

48 (c) (1) Any contractor who has one or more contracts with the state  
49 or a political subdivision of the state that is valued at less than fifty  
50 thousand dollars for each year of the contract shall provide the state or  
51 such political subdivision of the state with a written or electronic  
52 representation that complies with the nondiscrimination agreement  
53 and warranty under subdivision (1) of subsection (a) of this section,  
54 provided if there is any change in such representation, the contractor  
55 shall provide the updated representation to the state or such political  
56 subdivision not later than thirty days after such change.

57 (2) Any contractor who has one or more contracts with the state or a  
58 political subdivision of the state that is valued at fifty thousand dollars  
59 or more for any year of the contract shall provide the state or such  
60 political subdivision of the state with any one of the following:

61 (A) Documentation in the form of a company or corporate policy  
62 adopted by resolution of the board of directors, shareholders,  
63 managers, members or other governing body of such contractor that  
64 complies with the nondiscrimination agreement and warranty under  
65 subdivision (1) of subsection (a) of this section;

66 (B) Documentation in the form of a company or corporate policy  
67 adopted by a prior resolution of the board of directors, shareholders,  
68 managers, members or other governing body of such contractor if (i)  
69 the prior resolution is certified by a duly authorized corporate officer  
70 of such contractor to be in effect on the date the documentation is  
71 submitted, and (ii) the head of the agency of the state or such political  
72 subdivision, or a designee, certifies that the prior resolution complies  
73 with the nondiscrimination agreement and warranty under  
74 subdivision (1) of subsection (a) of this section; or

75 (C) Documentation in the form of an affidavit signed under penalty  
76 of false statement by a chief executive officer, president, chairperson or  
77 other corporate officer duly authorized to adopt company or corporate

78 policy that certifies that the company or corporate policy of the  
79 contractor complies with the nondiscrimination agreement and  
80 warranty under subdivision (1) of subsection (a) of this section and is  
81 in effect on the date the affidavit is signed.

82 (3) Neither the state nor any political subdivision shall award a  
83 contract to a contractor who has not provided the representation or  
84 documentation required under subdivisions (1) and (2) of this  
85 subsection, as applicable. After the initial submission of such  
86 representation or documentation, the contractor shall not be required  
87 to resubmit such representation or documentation unless there is a  
88 change in the information contained in such representation or  
89 documentation. If there is any change in the information contained in  
90 the most recently filed representation or updated documentation, the  
91 contractor shall submit an updated representation or documentation,  
92 as applicable, either (A) not later than thirty days after the effective  
93 date of such change, or (B) upon the execution of a new contract with  
94 the state or a political subdivision of the state, whichever is earlier.  
95 Such contractor shall also certify, in accordance with subparagraph (B)  
96 or (C) of subdivision (2) of this subsection, to the state or political  
97 subdivision, not later than fourteen days after the twelve-month  
98 anniversary of the most recently filed representation, documentation  
99 or updated representation or documentation, that the representation  
100 on file with the state or political subdivision is current and accurate.

101 (d) For the purposes of this section, "contract" includes any  
102 extension or modification of the contract, "contractor" includes any  
103 successors or assigns of the contractor, "marital status" means being  
104 single, married as recognized by the state of Connecticut, widowed,  
105 separated or divorced, and "mental disability" means one or more  
106 mental disorders, as defined in the most recent edition of the American  
107 Psychiatric Association's "Diagnostic and Statistical Manual of Mental  
108 Disorders", or a record of or regarding a person as having one or more  
109 such disorders. For the purposes of this section, "contract" does not  
110 include a contract where each contractor is (1) a political subdivision of  
111 the state, including, but not limited to, a municipality, (2) a quasi-

112 public agency, as defined in section 1-120, (3) any other state, as  
113 defined in section 1-267, (4) the federal government, (5) a foreign  
114 government, or (6) an agency of a subdivision, agency, state or  
115 government described in subparagraph (1), (2), (3), (4) or (5) of this  
116 subsection.

117 (e) For the purposes of this section, "minority business enterprise"  
118 means any small contractor or supplier of materials fifty-one per cent  
119 or more of the capital stock, if any, or assets of which is owned by a  
120 person or persons: (1) Who are active in the daily affairs of the  
121 enterprise, (2) who have the power to direct the management and  
122 policies of the enterprise, and (3) who are members of a minority, as  
123 such term is defined in subsection (a) of section 32-9n; and "good faith"  
124 means that degree of diligence which a reasonable person would  
125 exercise in the performance of legal duties and obligations. "Good faith  
126 efforts" shall include, but not be limited to, those reasonable initial  
127 efforts necessary to comply with statutory or regulatory requirements  
128 and additional or substituted efforts when it is determined that such  
129 initial efforts will not be sufficient to comply with such requirements.

130 (f) Determination of the contractor's good faith efforts shall include  
131 but shall not be limited to the following factors: The contractor's  
132 employment and subcontracting policies, patterns and practices;  
133 affirmative advertising, recruitment and training; technical assistance  
134 activities and such other reasonable activities or efforts as the  
135 commission may prescribe that are designed to ensure the  
136 participation of minority business enterprises in public works projects.

137 (g) The contractor shall develop and maintain adequate  
138 documentation, in a manner prescribed by the commission, of its good  
139 faith efforts.

140 (h) The contractor shall include the provisions of subsections (a) and  
141 (b) of this section in every subcontract or purchase order entered into  
142 in order to fulfill any obligation of a contract with the state and such  
143 provisions shall be binding on a subcontractor, vendor or  
144 manufacturer unless exempted by regulations or orders of the

145 commission. The contractor shall take such action with respect to any  
146 such subcontract or purchase order as the commission may direct as a  
147 means of enforcing such provisions including sanctions for  
148 noncompliance in accordance with section 46a-56; provided, if such  
149 contractor becomes involved in, or is threatened with, litigation with a  
150 subcontractor or vendor as a result of such direction by the  
151 commission, the contractor may request the state of Connecticut to  
152 enter into any such litigation or negotiation prior thereto to protect the  
153 interests of the state and the state may so enter.

154 (i) The Metropolitan District of Hartford County shall be deemed to  
155 be a political subdivision of the state for purposes of this section.

156 Sec. 2. Section 4a-60a of the general statutes is repealed and the  
157 following is substituted in lieu thereof (*Effective July 1, 2014*):

158 (a) Every contract to which the state or any political subdivision of  
159 the state other than a municipality is a party shall contain the  
160 following provisions:

161 (1) The contractor agrees and warrants that in the performance of  
162 the contract such contractor will not discriminate or permit  
163 discrimination against any person or group of persons on the grounds  
164 of sexual orientation, in any manner prohibited by the laws of the  
165 United States or of the state of Connecticut, and that employees are  
166 treated when employed without regard to their sexual orientation;

167 (2) The contractor agrees to provide each labor union or  
168 representative of workers with which such contractor has a collective  
169 bargaining agreement or other contract or understanding and each  
170 vendor with which such contractor has a contract or understanding, a  
171 notice to be provided by the Commission on Human Rights and  
172 Opportunities advising the labor union or workers' representative of  
173 the contractor's commitments under this section, and to post copies of  
174 the notice in conspicuous places available to employees and applicants  
175 for employment;

176 (3) The contractor agrees to comply with each provision of this  
177 section and with each regulation or relevant order issued by said  
178 commission pursuant to section 46a-56; and

179 (4) The contractor agrees to provide the Commission on Human  
180 Rights and Opportunities with such information requested by the  
181 commission, and permit access to pertinent books, records and  
182 accounts, concerning the employment practices and procedures of the  
183 contractor which relate to the provisions of this section and section  
184 46a-56.

185 (b) (1) Any contractor who has one or more contracts with the state  
186 or a political subdivision of the state that is valued at less than fifty  
187 thousand dollars for each year of the contract shall provide the state or  
188 such political subdivision of the state with a written representation  
189 that complies with the nondiscrimination agreement and warranty  
190 under subdivision (1) of subsection (a) of this section.

191 (2) Any contractor who has one or more contracts with the state or a  
192 political subdivision of the state that is valued at fifty thousand dollars  
193 or more for any year of the contract shall provide the state or such  
194 political subdivision of the state with any of the following:

195 (A) Documentation in the form of a company or corporate policy  
196 adopted by resolution of the board of directors, shareholders,  
197 managers, members or other governing body of such contractor that  
198 complies with the nondiscrimination agreement and warranty under  
199 subdivision (1) of subsection (a) of this section;

200 (B) Documentation in the form of a company or corporate policy  
201 adopted by a prior resolution of the board of directors, shareholders,  
202 managers, members or other governing body of such contractor if (i)  
203 the prior resolution is certified by a duly authorized corporate officer  
204 of such contractor to be in effect on the date the documentation is  
205 submitted, and (ii) the head of the agency of the state or such political  
206 subdivision, or a designee, certifies that the prior resolution complies  
207 with the nondiscrimination agreement and warranty under

208 subdivision (1) of subsection (a) of this section; or

209 (C) Documentation in the form of an affidavit signed under penalty  
210 of false statement by a chief executive officer, president, chairperson or  
211 other corporate officer duly authorized to adopt company or corporate  
212 policy that certifies that the company or corporate policy of the  
213 contractor complies with the nondiscrimination agreement and  
214 warranty under subdivision (1) of subsection (a) of this section and is  
215 in effect on the date the affidavit is signed.

216 (3) Neither the state nor any political subdivision shall award a  
217 contract to a contractor who has not provided the representation or  
218 documentation required under subdivisions (1) and (2) of this  
219 subsection, as applicable. After the initial submission of such  
220 representation or documentation, the contractor shall not be required  
221 to resubmit such representation or documentation unless there is a  
222 change in the information contained in such representation or  
223 documentation. If there is any change in the information contained in  
224 the most recently filed representation or updated documentation, the  
225 contractor shall submit an updated representation or documentation,  
226 as applicable, either (A) not later than thirty days after the effective  
227 date of such change, or (B) upon the execution of a new contract with  
228 the state or a political subdivision of the state, whichever is earlier.  
229 Such contractor shall also certify, in accordance with subparagraph (B)  
230 or (C) of subdivision (2) of this subsection, to the state or political  
231 subdivision, not later than fourteen days after the twelve-month  
232 anniversary of the most recently filed representation, documentation  
233 or updated representation or documentation, that the representation  
234 on file with the state or political subdivision is current and accurate.

235 (4) For the purposes of this section, "contract" includes any  
236 extension or modification of the contract, and "contractor" includes any  
237 successors or assigns of the contractor. For the purposes of this section,  
238 "contract" does not include a contract where each contractor is (A) a  
239 political subdivision of the state, including, but not limited to, a  
240 municipality, (B) a quasi-public agency, as defined in section 1-120, (C)



241 any other state, as defined in section 1-267, (D) the federal government,  
242 (E) a foreign government, or (F) an agency of a subdivision, agency,  
243 state or government described in subparagraph (A), (B), (C), (D) or (E)  
244 of this subdivision.

245 (c) The contractor shall include the provisions of subsection (a) of  
246 this section in every subcontract or purchase order entered into in  
247 order to fulfill any obligation of a contract with the state and such  
248 provisions shall be binding on a subcontractor, vendor or  
249 manufacturer unless exempted by regulations or orders of the  
250 commission. The contractor shall take such action with respect to any  
251 such subcontract or purchase order as the commission may direct as a  
252 means of enforcing such provisions including sanctions for  
253 noncompliance in accordance with section 46a-56; provided, if such  
254 contractor becomes involved in, or is threatened with, litigation with a  
255 subcontractor or vendor as a result of such direction by the  
256 commission, the contractor may request the state of Connecticut to  
257 enter into any such litigation or negotiation prior thereto to protect the  
258 interests of the state and the state may so enter.

259 (d) The Metropolitan District of Hartford County shall be deemed to  
260 be a political subdivision of the state for purposes of this section.

261 Sec. 3. Subsection (a) of section 4a-60g of the 2014 supplement to the  
262 general statutes is repealed and the following is substituted in lieu  
263 thereof (*Effective July 1, 2014*):

264 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,  
265 the following terms have the following meanings:

266 (1) "Small contractor" means any contractor, subcontractor,  
267 manufacturer, service company or nonprofit corporation (A) that  
268 maintains its principal place of business in the state, (B) that had gross  
269 revenues not exceeding fifteen million dollars in the most recently  
270 completed fiscal year prior to such application, and (C) that is  
271 independent. "Small contractor" does not include any person who is  
272 affiliated with another person if both persons considered together have

273 a gross revenue exceeding fifteen million dollars.

274 (2) "Independent" means the viability of the enterprise of the small  
275 contractor does not depend upon another person, as determined by an  
276 analysis of the small contractor's relationship with any other person in  
277 regards to the provision of personnel, facilities, equipment, other  
278 resources and financial support, including bonding.

279 (3) "State agency" means each state board, commission, department,  
280 office, institution, council or other agency with the power to contract  
281 for goods or services itself or through its head, and includes the  
282 Metropolitan District of Hartford County.

283 (4) "Minority business enterprise" means any small contractor (A)  
284 fifty-one per cent or more of the capital stock, if any, or assets of which  
285 are owned by a person or persons who (i) exercise operational  
286 authority over the daily affairs of the enterprise, (ii) have the power to  
287 direct the management and policies and receive the beneficial interest  
288 of the enterprise, (iii) possess managerial and technical competence  
289 and experience directly related to the principal business activities of  
290 the enterprise, and (iv) are members of a minority, as such term is  
291 defined in subsection (a) of section 32-9n, or are individuals with a  
292 disability, or (B) which is a nonprofit corporation in which fifty-one  
293 per cent or more of the persons who (i) exercise operational authority  
294 over the enterprise, (ii) possess managerial and technical competence  
295 and experience directly related to the principal business activities of  
296 the enterprise, (iii) have the power to direct the management and  
297 policies of the enterprise, and (iv) are members of a minority, as  
298 defined in this subsection, or are individuals with a disability.

299 (5) "Affiliated" means the relationship in which a person directly, or  
300 indirectly through one or more intermediaries, controls, is controlled  
301 by or is under common control with another person.

302 (6) "Control" means the power to direct or cause the direction of the  
303 management and policies of any person, whether through the  
304 ownership of voting securities, by contract or through any other direct

305 or indirect means. Control shall be presumed to exist if any person,  
306 directly or indirectly, owns, controls, holds with the power to vote, or  
307 holds proxies representing, twenty per cent or more of any voting  
308 securities of another person.

309 (7) "Person" means any individual, corporation, limited liability  
310 company, partnership, association, joint stock company, business trust,  
311 unincorporated organization or other entity.

312 (8) "Individual with a disability" means an individual (A) having a  
313 physical or mental impairment that substantially limits one or more of  
314 the major life activities of the individual, which mental impairment  
315 may include, but is not limited to, having one or more mental  
316 disorders, as defined in the most recent edition of the American  
317 Psychiatric Association's "Diagnostic and Statistical Manual of Mental  
318 Disorders", or (B) having a record of such an impairment.

319 (9) "Nonprofit corporation" means a nonprofit corporation  
320 incorporated pursuant to chapter 602 or any predecessor statutes  
321 thereto.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	4a-60
Sec. 2	<i>July 1, 2014</i>	4a-60a
Sec. 3	<i>July 1, 2014</i>	4a-60g(a)

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill, which makes technical changes to statutes regarding the Metropolitan District Commission, has no fiscal impact.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sSB 151****AN ACT CONCERNING CONTRACT COMPLIANCE REQUIREMENTS FOR THE METROPOLITAN DISTRICT OF HARTFORD.****SUMMARY:**

This bill makes technical changes in the laws regarding the Metropolitan District Commission's (MDC) status for purposes of nondiscrimination contracting requirements and the state's small and minority business set-aside program.

Specifically, the bill deems MDC to be a political subdivision of the state for purposes of existing requirements for nondiscrimination provisions in contracts with the state or political subdivisions, other than municipalities. Existing law already deems MDC to be a state agency for this purpose (PA 13-247, § 24).

Existing law and the bill also require MDC to participate in the set-aside program (also called the supplier diversity program).

MDC is a nonprofit municipal corporation providing water and sewer service in the greater Hartford area. It operates primarily under a 1929 special act charter and answers to a 29-member commission consisting mostly of municipal representatives.

EFFECTIVE DATE: July 1, 2014

**BACKGROUND*****Nondiscrimination Requirements for Contractors***

Existing law generally requires state contracts and contracts of political subdivisions, other than municipalities, to contain provisions that protect people against discrimination based on race, color, religious creed, age, marital status, national origin, ancestry, sex,

gender identity or expression, intellectual disability, mental disability, physical disability, or sexual orientation.

These requirements do not apply to contracts in which each party is (1) a municipality or other political subdivision of the state, (2) a quasi-public agency, (3) another state, (4) the federal government, (5) a foreign government, or (6) an agency of any of the above.

### ***Supplier Diversity Program***

This program requires state contracting agencies and other state entities ("state agencies") and political subdivisions, other than municipalities, to annually set aside at least 25% of the value of their contracts for exclusive bidding by certified independent small businesses. They must also set aside 25% of that amount (6.25% of the total) for exclusive bidding by certified minority-owned businesses. For these purposes, small businesses are those with a principal place of business in Connecticut and up to \$15 million in gross revenues in the most recent fiscal year before applying to participate. Minority businesses are independent small businesses owned by women, members of minority groups, people with disabilities, or nonprofit organizations.

State agencies and political subdivisions that are otherwise required to participate are exempt from the program if the total value of their contracts is less than \$10,000 in a given year.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 32      Nay 0      (04/01/2014)